

Appl. No. 09/700,561
Atty. Docket No. AA315X
Response dated January 4, 2007
In response to Office Action of April 12, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1, 4, 5 and 7-10 are pending in the present application. Claims 1, 4, 5 and 7-10 stand rejected under 35 USC § 102. With this submission, Claim 1 is amended; no claims are withdrawn, canceled, or added. The Applicant notes that the current amendments are the same as the amendments requested in the Amendment after Final Office Action filed on July 12, 2006, but not entered.

Rejections Under 35 USC § 102 Over Von Gompel

Claims 1, 4, 5 and 7-10 stand rejected under 35 USC § 102(b) as being unpatentable over Von Gompel, et al. (EP 0 547 497 A2). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 102 over the Von Gompel reference for the reasons discussed below.

Claim 1 is amended to replace "dimension" with "width" in four places. As a result of this amendment, the term "first lateral dimension" becomes "first lateral width" and the term "second lateral dimension" becomes "second lateral width." Claim 1 is also amended to replace "exceeding" with "greater than" in one place. Support for these amendments is found at least on page 17, lines 18-19 of the specification of the application as originally filed. Claim 1 is further amended to replace "each" with "said" in one place. As a result of this amendment, the phrase "each ear panel" becomes "said ear panel." This amendment provides proper antecedent basis for this phrase in claim 1.

The rejection of claims 1, 4, 5 and 7-10 under 35 U.S.C. § 102(b) over Von Gompel is improper, because the Final Office Action failed to establish anticipation, since the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1, as currently amended. "'A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)." MPEP § 2131. The Applicant submits that the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1, as currently amended.

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The Applicant's independent claim 1, as currently amended, recites in part "an ear panel having a waist edge and a leg opening edge" wherein "side elastomeric material is disposed over substantially all of said ear panel to provide extensibility extending from said leg opening edge to said waist edge." Claim 1 also recites in part that a "waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel."

The Applicant notes that the specification and figures of the application, as originally filed, describe and illustrate various aspects of the above-cited elements of the Applicant's independent claim 1. "The term 'panel' is used herein to denote an area or element of the pull-on diaper." (Application, page 7, line 6.) "The ear panel 10 has a waist edge 161." (Application, page 7, lines 24-25 and Figure 2.) "The waistband panel 6 extends generally longitudinally outwardly from and along the waist edge 190 of the medial panel 8 (i.e., central panel) and the waist edge 161 of the ear panel 10." (Application, page 7, lines 25-27 and Figure 2.)

The Final Office Action cited portions of the embodiment of Figure 5 of the Von Gompel reference against the ear panel element of the Applicant's independent claim 1. (Final Office Action, page 2, paragraph 2 – page 4, carryover paragraph.) The Final Office Action included a copy of Figure 5 of the Von Gompel reference, along with labels apparently provided by the Examiner to illustrate which portions of Figure 5 were cited against the ear panel element of the Applicant's claim 1. (Final Office Action, page 3.) The Final Office Action also stated that, for the Applicant's claim 1, "the examiner maintains the current rejection." (Final Office Action, page 5, line 12.) From the Applicant's review, that "current rejection" appears to be the following statement from the prior Office Action of November 1, 2005:

The examiner contends that the element 44 and the top of element 42 may be considered the extent of the ear panel and in that case Von Gompel provides a side elastomeric material that is disposed over substantially all of the ear panel and would ultimately provide the claimed extensibility.

(Page 6, lines 7-10.) The Applicant notes that the above-cited characterization appears to conflict with the characterization from the labels "waistband panel" and "waist edge" in the copy of Figure 5 in the Final Office Action.

The Applicant submits that "element 44 and the top of element 42" from the Von Gompel reference cannot be considered the extent of an ear panel as recited in part in the

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Applicant's independent claim 1, because this characterization does not provide that a "waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel" as recited in part in the Applicant's independent claim 1. In other words, if the top of element 42 from the Von Gompel reference is considered to be the top of an ear panel, then there would be no room for a "waistband panel" element as recited in claim 1 and as cited in the Final Office Action. (Page 3, copy of Figure 5.) Alternatively, if the bottom of element 42 from the Von Gompel reference is considered to be the top of an ear panel, then elastomeric material would not be "disposed over substantially all of said ear panel" as recited in claim 1 and cited in the Office Action of November 1, 2005. (Page 6, lines 7-10.) Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allowance of these claims.

Even if "element 44 and the top of element 42" from the Von Gompel reference may be considered the extent of an ear panel as recited in part in the Applicant's independent claim 1, this characterization does not provide that a "side elastomeric material is disposed over substantially all of said ear panel" as recited in part in the Applicant's independent claim 1. From the Applicant's review, this characterization may provide an elastomeric material over two portions of such an ear, not over substantially all of such an ear. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allowance of these claims.

Even if "element 44 and the top of element 42" from the Von Gompel reference may be considered the extent of an ear panel with elastomeric material disposed over substantially all of said ear panel, this characterization does not provide an ear panel having "a leg opening edge" as recited in part in the Applicant's independent claim 1. From the Applicant's review, such an ear would end at the bottom of element 44 and would not extend down far enough to include a leg opening. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's

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independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allowance of these claims.

"During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.' *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)." MPEP § 2111. The "words of a claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)." MPEP § 2111.01. The Applicant submits that the Final Office Action gave an unreasonably broad interpretation when it cited portions of the Von Gompel reference against elements in the Applicant's independent claim 1.

The Applicant's independent claim 1, as currently amended, recites in part an ear panel "wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width." The Applicant has amended this portion of claim 1 replacing the term "dimension" with the term "width." Support for this amendment is found at least on page 17, lines 18-19 of the specification of the application as originally filed. The Applicant has also amended the above-cited portion of claim 1 by replacing the term "exceeding" with the term "greater than."

The Applicant submits that the specification and figures of the application, as originally filed, provide clear definitions for the above-cited elements of the Applicant's independent claim 1. "The term 'panel' is used herein to denote an area or element of the pull-on diaper." (Application, page 7, line 6.) "In a preferred embodiment, the ear panel 10 and 11 is rendered extensible in the entire area of the ear panel 10 and 11 to form the extensible ear 46 and 48 by the side elastic material 70." (Application, page 16, lines 28-30 and Figure 6.) "The extensible ear 46 and 48 has a lateral width L1 between the inner side edge 46C and 48C and the outer side edge 46D and 48D proximate the lower end edge 46B and 48B, and a lateral width L2 between the inner side edge 46C and 48C and the outer side edge 46D and 48D proximate the higher end edge 46A and 48A. The lateral width between the inner side edge and the outer side edge is the width between the inner side edge 46C and 48C and the outer side edge 46D and 48D in the lateral direction perpendicular to the longitudinal center line 100." (Application, page 17, lines 9-16 and

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Figure 6.) In the embodiment illustrated in the Applicant's Figure 6, the "lateral width L1 is greater than the lateral width L2." (Application, page 17, lines 18-19 and Figure 6.) The Applicant points out that this portion of the specification corresponds with the Applicant's independent claim 1 as follows: L2 corresponds with the claim 1 term "first lateral width" and L1 corresponds with the claim 1 term "second lateral width."

The Final Office Action cited portions of the embodiment of Figure 5 of the Von Gompel reference against the ear panel element of the Applicant's independent claim 1. (Final Office Action, page 2, paragraph 2 – page 4, carryover paragraph.) The Final Office Action included a copy of Figure 5 of the Von Gompel reference, along with labels apparently provided by the Examiner to illustrate which portions of Figure 5 were cited against the ear panel element of the Applicant's claim 1. (Final Office Action, page 3.) The Final Office Action also stated:

With respect to the applicant's amendment to claim 1 which now requires a first and second lateral dimension with the second lateral dimension exceeding the first lateral dimension, the examiner maintains the current rejection and refers to claim 5. The examiner contends that any dimension or portion thereof extending in the lateral direction along what is considered as the ear panel may be considered the ear panel waist edge and any dimension or portion thereof extending in the lateral direction along what is considered to be the ear panel leg opening edge will meet the claimed limitations. The examiner considers the second lateral dimension to be that portion of the ear panel leg opening edge that exceeds the ear panel waist edge.

(Page 5, lines 10-18.)

The Applicant submits that the above citation by the Final Office Action of "any dimension or portion thereof extending in the lateral direction" from the embodiment of Figure 5 of the Von Gompel reference against the "first lateral width" and the "second lateral width" elements of the Applicant's independent claim 1 is unreasonably broad because this characterization by the Final Office Action disregards the clear definitions for the Applicant's claim elements, provided in the Applicant's specification. The Applicant submits that "any dimension or portion thereof extending in the lateral direction" differs from a "width between the inner side edge 46C and 48C and the outer side edge 46D and 48D in the lateral direction perpendicular to the longitudinal center line 100" as defined in the Applicant's specification. (Page 17, lines 14-16.)

Appl. No. 09/700,561
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From the Applicant's review, the Von Gompel reference does not appear to describe an ear panel "wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width" as recited in part in the Applicant's independent claim 1. Therefore, the Von Gompel reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the Final Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejections for independent claim 1 and dependent claims 4, 5 and 7-10 and allowance of these claims.

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Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the cited references. Accordingly, the Applicant respectfully requests reconsideration of this application and allowance of the pending claims.

Respectfully submitted,

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